

Neutral Citation No: [2019] NIQB 44	Ref: KEE10903
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered: 28/02/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEENS BENCH DIVISION

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

IN THE MATTER OF DECLAN QUINN

KEEGAN J

Ex tempore ruling

[1] This is an application to discharge a restraint order made by Mr Justice Maguire on 28 January 2016. I previously heard the application on 15 October 2018 and declined to discharge at that time. However, in my ruling I recorded:

- (i) I was concerned about delay in this case.
- (ii) I was swayed against discharge on the basis an accountancy report would be available by Christmas 2018 and that would lead to decisions being taken.
- (iii) I placed a reporting requirement on the prosecuting authorities that they report by 24 January 2019 and specifically stated I required a firm decision on the case by the end of January 2019.

[2] A review was set for 1 February 2019 by which stage I had received a letter from the Prosecution Service dated 24 January 2019. That letter set out the difficulties that were apparent in relation to obtaining the forensic accountant's report. The promised date of December 2018 faded away. At the review on 1 February 2019 Mr Quinn indicated an intention to apply again for discharge of the restraint order through counsel. I should say that he originally appeared as a litigant in person in these proceedings and then obtained the services of a solicitor and Mr Nugent of counsel. I pause to observe that this second application was based on

the original summons and having canvassed the procedural issue with counsel no point was raised about that.

[3] I therefore heard the case on 18 February and reviewed thereafter to allow for provision of further information after which I am now in a position to give this final ruling in relation to discharge of the Restraint Order.

[4] Mr Nugent BL has ably represented Mr Quinn throughout these proceedings and I am also grateful to Mr Brownlee BL who has represented the PPS and who has characteristically filed very helpful written arguments.

[5] I briefly state the background as follows. This case relates to an investigation into Mr Quinn by police into his activities as an accountant. The grounding affidavit states that complaints were received from five farmers in Fermanagh, regarding his management of their affairs and the charging of fees. On 20 August 2015 searches of Mr Quinn's premises took place and large quantities of documents were seized. Mr Quinn was also arrested on this date and interviewed between August 2015 and August 2016. I was informed by counsel he has been interviewed on seven occasions during that timeframe and not since. Mr Quinn has co-operated with police during those interviews and denies any wrongdoing in this case.

[6] I then turn to the progress of the police investigation. Mr Barr has set out the chronology in his most recent affidavit in particular at paragraphs 7-16. I have already recorded the fact that the documents were seized in 2015. I am told they comprise financial information including, and in particular, bank statements and that they amount to 15 lever arch files. I note that police accountancy has also been involved in an analysis of this information. As I have averted to, I was told that a forensic report would be available by December 2018 and then in the update the end of February 2019. Neither date has been kept. Rather the letter from PWC now attached as part of this application says "the estimated delivery of the report is 29 March 2019". That, of course, may change as it is given as an estimated date. I bear in mind as has been apparent in this case that further queries may be raised. Thereafter, of course, the report would have to be considered so on my reading a decision on whether charges will be brought cannot realistically be expected for another number of months. Significantly, I was given no firm indication of when exactly the PPS will be in a position to decide whether or not charges will be laid in this case. This is all in the context of a pre-charge Restraint Order and an investigation which commenced in August 2015 now 3½ years ago. I was also told that the estimated amount at present, which of course may change, is a potential £100,000 loss to the complainants.

[7] The complicating factor in this case relates to the fact that Mr Quinn faces other proceedings and a fixed charge receiver has been appointed to manage some of his assets. Mr Quinn is particularly concerned about his farm at 60 Rockdale Road which is in the possession of the fixed charge receiver at present subject to a judgment in favour of the bank made by Madam Justice McBride, now on appeal to

the Court of Appeal. That ruling has prompted this discharge application as Mr Quinn essentially wants to try to clear his debts with Barclays Bank to get back his farm. I asked Mr Quinn to clarify his exact position on affidavit and he has done so. Unfortunately, I note that matters may not be so straightforward as I thought *vis a vis* the bank and fixed charge receiver. I will say no more about that. But nonetheless it is clear that Mr Quinn's intentions remain the same. Whilst I have encouraged a pragmatic solution in this case I can take that no further.

[8] I therefore turn to the specific application before me. Before doing so I reflect the fact that this Restraint Order has, in my view, undoubtedly affected the applicant, Mr Quinn, in the peaceable enjoyment of his property and ability to deal with property. In particular, I note that variations have been granted to the fixed charge receiver to deal with Mr Quinn's property other than the farm and since the Restraint Order was made.

[9] I then turn to the legal requirements placed upon me in looking at this issue. The Proceeds of Crime Act 2002 provides for pre-charge restraint within the statutory scheme. I bear in mind the statutory aim of this legislation to protect assets which may form the basis of a Confiscation Order. There has been no issue raised that the actual conditions for the making of a Restraint Order are met although that is an arguable course to take in these types of proceedings. However, that is not being pursued in this case. I also reflect that this type of order is particularly onerous and following on from various decisions in the confiscation field such as *R v Waya* [2012] UKSC 51 it is clear that the POCA regime engages the ECHR convention provisions. I see no reason why (and indeed counsel accepted that) the convention should not also apply to restraint. Article 1 of Protocol 1 is of course the key provision which enjoins the authorities and the court to look at the issue of peaceable enjoyment of property.

[10] Of course, stepping back, a further protection is inherent in the legislative scheme in Section 191(7) itself and that is the provision which I am dealing with. That sets out that the court must discharge an order if proceedings are not brought within a reasonable time. What is a reasonable time is not defined in the legislation and so it will depend on the particular facts of a case whether this test is met. As I have said I must discharge if so satisfied. In this decision making process I have considered all of the evidence carefully and anxiously. I have gathered together as much factual evidence as I can in order to reach my decision. I am also grateful to the analysis in this area by Mr Justice Treacy, as he then was, in the case of *Donnelly* [2010] NIQB 5.

[11] In all of the circumstances whilst there are some question marks as to exactly what will transpire in Mr Quinn's dealings with the bank I must concentrate on the statutory test. I have decided, weighing up all of the various factors, that I should discharge the restraint order for the following reasons. In doing so I should say that I understand that the PPS only realistically now seek restraint regarding the Rockdale Road farm as an asset with some equity to protect the £100,000 estimated

loss. Mr Quinn in his affidavit sets out some valuation evidence and refers to the debt and costs and I just pause to observe those costs will, of course, continue to rise. This is an issue which it is in everyone's interests to grapple with.

[12] The reasons why I am going to discharge the order are these:

- (i) This applicant was arrested in August 2015 – 3½ years later no charges have been laid despite the fact that police seized all relevant documentation and core documentation at that time.
- (ii) I was clear in October 2018 that I was not discharging the Restraint Order then due to assurances that there would be a forensic report by December 2018 and decisions by January 2019. The goal posts moved to February 2019 for the report and now the end of March. Maybe on the face of it that is not a significant further time but there is no clear path when the PPS will take a decision after that. Given the pace to date in this case I am not optimistic this will be swift.
- (iii) It should have been clear I was not going to tolerate further delay given my ruling in October.
- (iv) This case is far removed from the complex fraud investigations which characterise the cases such as *Lexi Holdings v SFO* [2008] EWCA Crim 1448 was described as a very complex case and *AL Zayat v SFO* [2007] EWCA 1927 and [2008] EWHC 315 refers to 8 jurisdiction and multimillion pound frauds. These cases have rightly been put before me by Mr Brownlee but I consider that they are different from the complexion of this case. By contrast this is an alleged professional fraud which is evidenced by bank account transactions contained in 15 lever arch files.
- (v) Mr Quinn has co-operated with police, the delay in this case cannot be laid at his door. Also, he has co-operated with this court and given various undertakings to the court which are on record as part of Mr Quinn's evidence given that he gave oral evidence to me on oath and also on affidavit.
- (vi) If these assurances were broken, and I do not suggest that they would be given the representations made by Mr Nugent on behalf of Mr Quinn, Mr Quinn can expect further court applications and little sympathy in any future application.
- (vii) In the near future it also seems clear that the fixed charge receiver and bank will have control of 60 Rockland Road. What happens in the future following that remains to be seen.

[13] It follows that I do not consider that the restraint order should remain in place pursuant to Section 191(7) as proceedings, in my view, have not commenced within a reasonable time.